

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

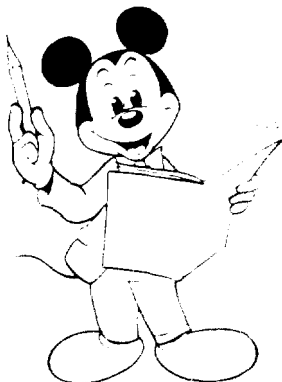
Policies and Rules Concerning  
Children's Television Programming

Revision of Programming Policies  
for Television Broadcast Stations

MM Docket No. 93-48

REPLY COMMENTS OF

THE *WALT DISNEY* COMPANY



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## SUMMARY

At the end of the day, the success of the Children's Television Act of 1990 will depend on the Federal Communications Commission's willingness to create an environment that encourages innovative, exciting programs that educate children while attracting and holding their attention. Bluntly stated, this requires educational programs to entertain while they educate. And it also requires that the creators of such programs and the broadcasters who air them have the flexibility and incentive to experiment with different formats of educational programs. The goals of the Act will not be met if the Commission, however unwittingly, adopts a regulatory regime that encourages pedantic programs that all look alike -- and which children will never watch.

All commenters in this proceeding agree that the Commission's goal is to ensure that broadcasters fulfill their obligation to air programs that educate and inform children. All commenters also agree that programs like *The Flintstones* do not satisfy that obligation. The only significant disagreement among commenters is whether the Commission should identify a narrow category of "core" programming that will satisfy the broadcaster's obligation and, if so, whether the Commission should prescribe limiting characteristics of such programming. In particular, disagreement exists as to whether the Commission should specify the length and amount of such programming and whether the Commission should relegate the entertainment value of such programming to secondary status.

The Walt Disney Company ("Disney") urges the Commission to heed the warning of those commenters who are in the business of producing and broadcasting educational children's programs and, who, through years of experience, recognize the importance of presenting educational programs in an engaging manner in order to attract and hold children's

attention. These parties include not only other producers of children's programming such as Children's Television Workshop (producer of *Sesame Street*) but also broadcasters such as ABC and NBC, who have broadcast regularly scheduled educational programs like *Name Your Adventure*, specials like *President Clinton: Answering Children's Questions* and short-form programs like *ABC Schoolhouse Rock*.

The warning is clear: The Commission should not (and need not) overreact to the apparent abuses of a few in a manner that would frustrate the Act's purpose and unnecessarily tramell the First Amendment rights of broadcasters. The proposals set forth in the Commission's Notice of Inquiry, however, threaten to do just that. Defining educational programming as primarily educational, with any entertainment value relegated to purely secondary status, ignores the precept of modern educational theory that children learn best when they are engaged and entertained. The proposed definition fails to provide broadcasters with better guidance as to which programs meet the definition. And it discourages broadcasters from airing programs that both educate *and* entertain (and, therefore, that children will watch). Moreover, limiting "core" programming to regularly scheduled, standard-length programs will needlessly discourage specials and short-form programming and thereby eliminate the discretion Congress intended to afford broadcasters in determining how best to meet children's educational programming needs.

The Commission should not retract from the approach it so carefully adopted in 1991 to avoid a "de facto system of precensorship." It should not attempt to rank the educational and entertainment values of each program. And it should not employ the "core" concept at all. Rather, so long as a broadcaster makes a reasonable, good faith judgment that *a significant purpose* of a program is educational, the Commission should permit that program

to count toward the broadcaster's educational programming obligation. Such an approach will eliminate any problem of broadcasters designating purely entertainment programs (like *GI Joe*) as educational. At the same time, it will encourage innovative programming designed to teach children while, in the words of Congress, "entertaining them and exciting their curiosity to learn."

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In its Notice of Inquiry ("NOI"), the Commission appears to have lost sight of this fundamental concept. The Commission proposes to "count" only "core" programming in assessing whether a broadcaster has fulfilled its educational programming obligation. And the Commission proposes that to qualify as "core" programming, a program must be regularly scheduled, at least 30 minutes in length, and its *primary* purpose must be educational (with entertainment only a *secondary* purpose).

As many commenters cogently demonstrate, the consequences of these proposals will ultimately disserve the Act's purpose. Accordingly, as explained more fully below, the Commission should discard the concept of "core" programming and, instead, encourage broadcasters to air a full range of educational programs that entertain as they educate.

#### **I. THE CONCEPT OF "CORE" PROGRAMMING CONFUSES THE ISSUE AND ULTIMATELY FRUSTRATES THE ACT'S PURPOSE**

In an attempt to provide broadcasters with further guidance as to which educational programs will qualify under the Act, the Commission has introduced (for the first time) the concept of "core" programming.<sup>2</sup> While Disney is sympathetic to the Commission's desire to provide better guidance to broadcasters, we agree with the many broadcasters who urge the Commission to reject the "core" concept. As explained below, the definition proposed for "core" programming (programming that has education as its primary objective with any entertainment value only secondary) confuses rather than clarifies which programs constitute educational programming. Moreover, the proposal to limit "core" programming to standard-length, regularly scheduled programs contravenes Congress' intent to afford broadcasters

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<sup>2</sup> Policies and Rules Concerning Children's Television Programming, 8 FCC Rcd. 1841, 1842 (1993) ("NOI").

broad discretion in meeting children's educational needs and arbitrarily excludes programs that would otherwise contribute to a broadcaster's efforts to meet those needs.

**A. Far From Clarifying What Constitutes Educational Programming, The Proposed Definition of "Core" Programming Only Confuses the Issue**

Although the Commission and some commenters assert that the proposed definition of "core" programming will clarify which programs are educational, other commenters, particularly broadcasters, explain that the proposed definition will only confuse the issue further. In Disney's view, this second group of commenters has the better argument.

The Commission's own statement proves the point. Referring to its proposal to require that education be the primary purpose of "core" programming, with entertainment a secondary purpose, the Commission states:

This clarification should help licensees and the Commission to avoid the difficult and subjective task of distinguishing the relative educational merits of some programs identified approvingly in the



education is not *the primary* purpose of that program. With all due respect, therefore, the education/entertainment dichotomy only confuses the issue.

The important distinction between educational programs like *Winnie The Pooh* and non-educational programs like *The Flintstones* is thus *not* whether *the primary purpose* is to educate. Rather, the critical distinction is whether education is *a significant purpose*. In short, the proposed definition of "core" programming fails to clarify what is educational and, as explained in Section II(A) below, will effectively discourage the very types of entertaining, educational programs approvingly cited by Congress.

**B. The Concept of A Narrow Category of Qualifying "Core" Programming Is Inconsistent With Congressional Intent In That It Limits Broadcaster Discretion To Rely On Diverse Formats of Educational Programs**

As the broadcast commenters correctly note, the Commission's concept of a narrow category of qualifying "core" programming is inconsistent with Congress' intent to allow broadcasters wide discretion in choosing from among a broad selection of programming to satisfy their obligations under the Act.<sup>4</sup> As NBC notes, for example, Congress envisioned a standard that "does not exclude *any* programming that does in fact serve the educational and informational needs of children . . . ."<sup>5</sup>

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<sup>4</sup> See, e.g., Comments of NBC at 5-9. NBC accurately notes that Congress, in affording broadcasters such discretion, was sensitive to constitutional concerns regarding regulation of program content.

<sup>5</sup> *Id.* at 5-6, *citing* Children's Television Act of 1990, House Committee on Energy and Commerce, H.R. Rep. No. 385, 101st Cong., 1st Sess. 16 (1989) ("House Report") at 11 (emphasis added); Children's Television Act of 1990, Senate Committee on Commerce, Science and Transportation, S. Rep. No. 227, 101st Cong., 1st Sess. 22 (1989) ("Senate Report") at 17 (emphasis added).

By identifying a narrow category of qualifying "core" programming, the Commission will effectively exclude certain programming, such as specials, short-form programs, and other programs that serve the informational and educational needs of children. If only "core" programming counts toward fulfilling a broadcaster's obligation, the broadcaster will have no incentive to air anything else. Act III Broadcasting, for example, explains that "[i]f broadcasters must place their primary reliance on standard-length programming to satisfy the Act, they may be dissuaded from developing local short-segment programming."<sup>6</sup>

Excluding specials and short-form programming, however, is antithetical to the Act's purpose. The Commission, in its 1991 Order, expressly found that short-form programming could serve a useful purpose in educating children.<sup>7</sup> Many commenters in this proceeding continue to demonstrate the benefits that short-form programs can provide as a supplement to standard-length, regularly scheduled educational programming. For example, Act III Broadcasting notes that the relative low cost of short-form programs makes them more affordable to smaller, independent broadcasters who might otherwise be unable to produce their own local educational programming.<sup>8</sup> In addition, short-form segments can be aired between popular entertainment programs -- taking advantage of existing audiences.<sup>9</sup>

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6 Comments of Act III Broadcasting at 10. Broadcasters were understandably taken by surprise by the Commission's recent about-face with respect to short-form programming. A group of 36 broadcasters, for example, noted that the "Commission's new-found dislike of short segment programming is nothing short of mystifying." Comments of Hadley, Bader & Potts at 13.

7 Recon. Order at 5101.

8 Comments of Act III Broadcasting at 10. The Commission also recognized this benefit of short-form programs. Recon. Order at 5101.

9 See Comments of Tribune Broadcasting Company at 8-9 ("[T]he Commission should take a lesson from commercial advertisers (including political candidates) about the value of short-segment programming in delivering a message to an audience."); see also Comments of ABC at 2-6 (describing *ABC Schoolhouse Rock*, a highly successful example of short-form programming).

Commenters also note that specials (which are standard-length but, by definition, not regularly scheduled) can also significantly contribute to children's education. In our earlier comments, for example, we discuss the one-time *All Star Cartoons To The Rescue*, a special that dealt with drug abuse and earned high ratings and acclaim. A more recent example of an educational and informational special was ABC's *President Clinton: Answering Children's Questions*. These are but two examples of unique educational programs that could only be produced as specials.

The Commission's regulatory scheme should be structured to encourage, not discourage, broadcasters from airing programs like these.<sup>10</sup> To this end, the Commission should create an environment that encourages a diverse array of innovative and exciting programs that educate children while attracting and holding their attention, regardless of the program's format or length. Simply stated, the Commission should discard its narrow "core" programming proposal.

## **II. THE COMMISSION SHOULD DEFER TO A BROADCASTER'S REASONABLE, GOOD FAITH JUDGMENT THAT "A SIGNIFICANT PURPOSE" OF A PROGRAM IS EDUCATIONAL**

The Act requires broadcasters to air "programming designed to meet the educational and informational needs of children."<sup>11</sup> The Commission now proposes to allow broadcasters

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10 The public interest will hardly be served if broadcasters received "credit" for airing (and therefore are encouraged to air) a regularly scheduled program that features a dry lecture by a teacher, but none for specials featuring the President answering children's questions. That, however, would be the consequence of the Commission's current proposals.

11 47 U.S.C. §§ 303a, 303b.

to satisfy this obligation only by airing programs that have education as their *primary* purpose, with entertainment value merely *secondary*. Although a few commenters support the Commission's primary purpose proposal,<sup>12</sup> most oppose it, because the education/entertainment distinction embodied in the definition is a false dichotomy that will frustrate rather than further the Act's purpose.<sup>13</sup> Many of these commenters urge the Commission to rely instead upon a broadcaster's good faith judgment as to what programming best serves children's needs.<sup>14</sup>

Disney likewise opposes the Commission's proposal, because nothing is gained by a standard that encourages broadcasters to air programs that children will not watch. If children refuse to watch the programs because they are too boring, the Commission will have frustrated, not furthered, the purpose of the Act. Moreover, as we noted in our initial Comments, regulating entertainment out of children's educational programming flies in the face of modern educational theory that children learn best when they are engaged and entertained.

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12 See, e.g., Comments of the Center for Media Education et al. at 8, *citing* NOI at 1842.

13 See Comments of Children's Television Workshop at 6, Comments of NBC at 30 and Comments of Act III Broadcasting at ii.

14 See, e.g., Comments of NBC at 9-10 and Comments of NAB at 8.

**A. Discouraging Programs That Are As Entertaining As They Are Educational Will Result In Programming That Children Will Not Watch**

Commenters who support the Commission's "primary purpose" proposal urge the Commission to limit further its definition of "educational" programming. The Center for Media Education, for example, urges the Commission to delineate specific subjects that qualifying programs must address.<sup>15</sup> While no doubt formulated with the best of intentions, proposals such as these would only stifle creative and innovative educational programming -- because the more restrictions the Commission imposes on educational programming, the less room it leaves for innovation. The Commission should be encouraging creativity, not restricting it.

In any event, proposals that reinforce the educational/entertainment dichotomy ignore the consequences that will ensue -- because all the sophisticated educational strategies in the world will fail if children do not watch the program. Yet, the Commission risks this very result if it ignores the value of entertainment and narrows the category of qualifying programming too severely.

We do not mean to suggest that sophisticated educational strategies are inappropriate in connection with children's programming. To the contrary, modern

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<sup>15</sup> Comments of the Center for Media Education at 11. Other commenters urge the Commission to require qualifying programming to specify a targeted age group. *E.g.*, Comments of the National Association for the Education of Young Children at 1. By its nature, educational children's programming will not appeal to all children aged 2 through 16. The Commission, therefore, need not mandate that such programming be age-specific. Rather, the Commission should permit but not require age-specific programming. *See* Comments of the Walt Disney Company, filed Feb. 20, 1991 at 21 n.51. In any event, the sub-groups to which educational programming appeals will depend more on a child's mental and cognitive development than on his or her chronological age.

educational theory teaches that the creative use of entertainment is, in itself, an important educational strategy.<sup>16</sup> The comments of those who are in the business of attracting children's attention -- program producers and broadcasters -- confirm that what is true in the classroom is equally true on the television.

Children's Television Workshop ("CTW"), for example, creator of legendary children's programming such as *Sesame Street*,<sup>17</sup> explains that a program must "reach" before it can "teach," and advocates education through high-quality and *entertaining* programming.<sup>18</sup> CTW warns that ignoring the important component of entertainment in children's programming will result in "[d]ry pedantic formats" that "will not be watched."<sup>19</sup> Like Disney, CTW recommends that the Commission encourage programming "that will *combine* audience appeal with educational effectiveness."<sup>20</sup>

Broadcasters similarly understand that children will not watch programming that is not entertaining. NAB, for example, states that "children's programming must have high entertainment value to be watched and assimilated."<sup>21</sup> ABC comments that "education and

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16 See Comments of The Walt Disney Company at 4-5.

17 *Sesame Street*, in addition to being cited by Congress as a program of proven educational merit, is an international institution and is considered a prototype of educational programming that uses entertainment to educate.

18 In its programs, CTW strives to "not only impart[ ] information and teach[ ] cognitive and social skills, but also motivat[e] and empower[ ] children *to learn and to have fun doing so.*" Comments of CTW at 2 (emphasis added).

19 *Id.* at 7.

20 *Id.* (emphasis in original). Interestingly, some of the very groups who support the Commission's education/entertainment dichotomy point to *Sesame Street* as a prototype for children's programs. *E.g.*, Comments of the Center for Research on the Effects of Television at 8.

21 Comments of NAB at 21.

entertainment are twin objectives and neither is more 'primary' than the other."<sup>22</sup> NBC argues that the "primary" purpose proposal creates a "terrible false dichotomy -- that programs that inform and educate cannot entertain."<sup>23</sup>

Even some of the commenters who support the dichotomy in theory point approvingly to programs that entertain while they educate.<sup>24</sup> Indeed, the co-chair of the Center for Media Education has stated: "As a society, our willingness to provide programs that combine education and entertainment reflects how much we value our young people."<sup>25</sup>

The Commission's proposal, however, by requiring that a program's entertainment value be clearly secondary to its educational value, will result in pedantic and dull programming. As Act III Broadcasting explains, "broadcasters will be fearful of airing a program that is too 'entertaining' lest it fail to fulfill [the Act's] programming obligations . . . ."<sup>26</sup> As a result, warns INTV, stations will "substitute inexpensive, poor quality, unpopular programs which, nonetheless, were primarily educational and informational."<sup>27</sup> Children, however, will not watch these "poor quality, unpopular

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22 Comments of ABC at 10.

23 Comments of NBC at 30.

24 *E.g.*, Comments of the Center for Media Education at 6 n.9 (describing *Beakman's World* as "a show that teaches science in an entertaining style"). The co-chair of the Center described *Beakman's World* as "a good show but it's an exception to the rule." L.A. Times at 7. Our proposal to eliminate the primary purpose test and substitute a significant purpose test is intended precisely to encourage these kinds of engaging, educational programs to become the rule rather than the exception.

25 R. Mahler, "Fear Is a Great Motivator," Los Angeles Times, May 30, 1993 at 7.

26 Comments of Act III Broadcasting at ii.

27 Comments of INTV at 12.

programs," and hence will not learn anything from them. There appears to be little disagreement that such a result is undesirable.

**B. The "Significant Purpose" Standard Proposed By Disney Will Both Encourage Broadcasters To Air Educational Programming Children Will Watch And Prevent Broadcasters From Avoiding Their Obligation To Air Educational Programming**

The Commission's NOI was prompted by its concern that certain broadcasters are evidently attempting to avoid their educational programming obligation by listing purely entertaining programs such as *The Flintstones* as educational. But the problem has never been that educational programs also entertain. The litany of programs cited approvingly by Congress and the success of programs like *Sesame Street* are a testament to this fact. In addressing its concern over broadcasters relying on *The Flintstones*, therefore, the Commission must be careful not to regulate all entertainment value out of educational programs, however unwittingly.

This result is easily avoided. As we urged in our Comments, the Commission should defer to a broadcaster's reasonable, good faith judgment that *a significant* -- rather than *the primary* -- purpose of a program is educational in allowing the broadcaster to count that program toward its educational programming obligation. Under this standard, broadcasters will not be discouraged from airing programs that educate while they entertain. At the same time, such an approach will ensure that broadcasters cannot avoid their programming obligation, because it would be unreasonable for a broadcaster to determine that a significant purpose of a program such as *The Flintstones* is educational.

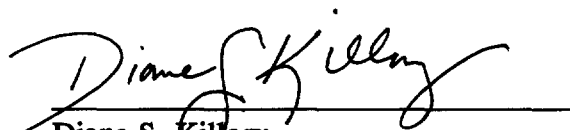


## CONCLUSION

For the reasons set forth above and in our earlier Comments, Disney urges the Commission to move cautiously as it offers further guidance to broadcasters with respect to fulfilling their educational programming obligation. To ensure that it furthers rather than frustrates the Act's goal of fostering diverse and plentiful educational programs that children will watch, the Commission should not adopt a narrow category of "core" programming. Rather, the Commission should permit broadcasters to rely on any program that has a significant purpose of educating children. If another significant purpose of the program is to entertain children while it educates them, so much the better. The goal, after all, is not to bore children with pedantic programming. The goal, as Congress itself succinctly stated, is to teach children "while entertaining them and exciting their curiosity to learn."

Respectfully submitted,

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